

No. 1-12-1248

NOTICE: This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

MARY PAT DORNER, as Special Administrator of the Estate of Melissa C. Dorner, Deceased,)	Appeal from the Circuit Court of Cook County.
)	
Plaintiff-Appellee,)	
)	
v.)	No. 07 L 473
)	
WILMETTE REAL ESTATE and MANAGEMENT COMPANY, formerly known as Wilmette Real Estate, Inc., an Illinois Corporation, BCHTOWER, LLC, an Illinois Limited Liability Corporation,)	
)	
Defendants-Appellants)	
)	
(Roberto Ramirez,)	Honorable
)	Daniel J. Lynch,
Defendant).)	Judge Presiding.

JUSTICE DELORT delivered the judgment of the court.
Justices Hoffman and Cunningham concurred in the judgment.

ORDER

¶ 1 *HELD:* We reverse the order of the circuit court denying defendants-appellants’ motion for judgment notwithstanding the verdict. As a matter of law, defendants-appellants had no duty to protect plaintiff’s decedent from the independent third party criminal action that resulted in her murder. As a result of our findings, the jury verdict entered in favor of defendants-appellants is reversed without remand.

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¶ 2 On January 25, 2005, Melissa C. Dorner was tragically raped and killed by Roberto Ramirez in her apartment in a building owned by Wilmette Real Estate & Management Company (WRE). Dorner's mother, Mary Pat Dorner,¹ filed this lawsuit against Ramirez for wrongful death, survival, and damages under the Rights of Married Persons Act, commonly known as the Family Expense Act (750 ILCS 65/15 (West 2006)), and against defendants-appellants, WRE and BCHTOWER, LLC (BCHTOWER) (collectively, the WRE defendants).² Winthrop Tower, the apartment building in question, owned and managed by the WRE defendants, is located at 6151 North Winthrop Avenue in Chicago. Ramirez was convicted of first degree murder for decedent's death.

¶ 3 On March 27, 2012, a jury returned a verdict in favor of plaintiff and against defendant Ramirez and the WRE defendants in the amount of \$10 million. The jury apportioned 10% of the fault, or \$1 million of the total verdict, to the WRE defendants. After the jury verdict was read, but before the court entered judgment on the verdict, the WRE defendants orally moved for judgment notwithstanding the verdict (judgment *n.o.v.*), while asking for leave to brief their motion in writing. The circuit court heard the oral motion and denied it.

¶ 4 On April 4, 2012, the WRE defendants filed their written posttrial motion for judgment *n.o.v.* The circuit court denied that motion on April 23, 2012. The WRE defendants timely appealed. We reverse the denial of the WRE defendants' motion for judgment *n.o.v.*, which

¹ Guy M. Bonneville, as special administrator for the estate of decedent, filed the initial complaint, but on February 14, 2012, Mary Pat Dorner was substituted in as party plaintiff.

² The initial complaint also named other defendants, but they were dismissed upon disposition of various motions.

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results in the reversal of the jury verdict against the WRE defendants without remand.

¶ 5

BACKGROUND

¶ 6 Defendants BCHTOWER and WRE are the owner and managing agent, respectively, of Winthrop Tower, which contains 120 small apartment units. The amended complaint filed against them on October 24, 2007 alleges four counts: (1) wrongful death; (2) a survival action; (3) damages under the Family Expense Act; and (4) breach of the implied warranty of habitability. The amended complaint claimed, among other things, that the WRE defendants negligently caused or contributed to decedent's death. The amended complaint alleged that the WRE defendants owed a duty to decedent to: (1) "provide adequate security measures and management consistent with the industry standard of care for rental housing and in compliance with all housing laws"; (2) "assess the level of criminal activity in the building and surrounding neighborhood and either warn tenants of the risk and/or implement security measures responsive to the level of foreseeable crime"; (3) "warn or disclose latent defects in building security that might increase her risk of harm, prior to her signing the lease for an apartment"; (4) "not misrepresent the safety features of the building or the foreseeable crime rate in the surrounding neighborhood when marketing the building"; (5) "adequately screen tenants and enforce reasonable rules of tenancy for this shared rental building"; and (6) "employ an on-site property manager and janitor to properly manage and maintain a reasonable level of security in this large aging building." The amended complaint alleged that Ramirez and the WRE defendants breached these duties in multiple ways and that, as a result, decedent sustained injuries that resulted in her death. The WRE defendants denied all material allegations contained in the

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amended complaint.

¶ 7 The case proceeded to a jury trial from March 19 to March 27, 2012. The jury viewed the videotaped evidence deposition of Ramirez, in which he testified as an adverse witness for plaintiff. In 2004, Ramirez spoke to a building representative to inquire about an available studio apartment. However only Maldonado and another friend of Ramirez, Israel Rodriguez, signed and filled out the rental application for the apartment. Ramirez never signed the lease for the apartment and never saw a copy of the lease until counsel for plaintiff presented him with a copy at the deposition. Ramirez authorized the others to sign all paperwork regarding the apartment rental, but he did contribute to the rent payments. He testified that he did not have a valid Social Security number when he sought to move into Winthrop Tower and that the Social Security number listed under his name on the rental application did not belong to him. The three men moved together into a fifth-floor studio apartment in the building on May 1, 2004.

¶ 8 On January 22, 2005, Ramirez returned home from work and began drinking and using cocaine with his roommates and another man named “El Tiger” who lived on the ninth floor of the same building. Ramirez agreed that he and his roommates became intoxicated. Ramirez’s roommates and El Tiger began fighting. Ramirez and Maldonado brought El Tiger back to his apartment and returned to their apartment. Ramirez told his roommates he was going to bed. He next remembered waking up next to decedent’s body. He recalled the presence of a lot of blood. He stood up and noticed the door to the apartment was open. He had never been inside decedent’s apartment before and had never seen or met decedent. Ramirez could not think of a reason why decedent would let him into her apartment. He had no reason to be on the tenth

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floor. Ramirez did not remember whether he forced himself into decedent's apartment. Ramirez told police he forced his way into decedent's apartment because "they asked me how I got in. They want[ed] to know." He pled guilty to the murder of decedent and is serving a 50-year prison sentence.

¶ 9 Cameel Halim, the president of WRE and manager of BCHTOWER, testified that WRE managed Winthrop Tower during the relevant time period. He stated that Winthrop Tower is "a well-run building" with two on-site supervisors, Resit and Paqiza Limonovski. Leslie Sherman, WRE's director of operations, supervised the Limonovskis during 2004 and 2005. WRE also employed Michael Wolter as its leasing agent in 2004 and 2005, and his responsibilities included reviewing and approving prospective tenant applications.

¶ 10 If a prospective tenant inquired about an apartment, Paqiza would show the apartment and give the prospective tenant a rental application. Halim expected Paqiza to make accurate representations about the building to prospective tenants, including tenant screening procedures, but also stated, "I don't think Paqiza knows what the screening process is because she doesn't do it. It's not one of her jobs, and I believe that she will not give advice on that. She will tell them to call the office." Halim also expected Wolter to check the information in the rental application to ensure its accuracy.

¶ 11 Plaintiff's counsel then presented Halim with a copy of Winthrop Tower's rental application. Counsel noted the "miscellaneous section," which requests a listing of court convictions, including criminal convictions. Wolter would run a credit check on the applicants "to be sure the applicant would fulfill his obligations." According to Halim, Wolter's job

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consisted of ensuring the prospective tenant had the “financial ability to pay the rent.” Halim also expected Wolter to call the applicant’s previous landlord “to ask[] what kind of a tenant he is.” Halim testified he wanted all prospective tenants “to be good tenants.” If Wolter contacted the previous landlord “and they said this is a destructive tenant, they have so many visitors, we don’t take him because it was a bad reference from his old landlord.” The prospective tenant needed to have “a good rent reference.” The screening process for prospective tenants did not include criminal background checks. Halim testified that nothing was wrong with the security measures for the building. The front door locks and intercom system functioned properly and no changes were made following the December 2004 murder of a building janitor.

¶ 12 Plaintiff called Michael Wolter to testify as an adverse witness. He worked as a leasing agent for WRE from 1990 to 2007. Wolter processed rental applications and generated leases and testified regarding leasing procedures for the building. If Wolter determined that the application included fraudulent information, he would reject it. Company policy only permitted two people to reside in a Winthrop Tower studio. Wolter then testified regarding Ramirez’s rental application, which listed the names of Ramirez, Rodriguez, and Maldonado, but Rodriguez’s name had a line drawn through it. Wolter stated that if he had found Ramirez provided a false Social Security number, he would have rejected the application.

¶ 13 Wolter next testified that he obtained a credit report on Ramirez from TransUnion, after providing Ramirez’s name, Social Security number, date of birth, and current address. The report listed Ramirez’s Social Security number as “No subject found,” a classification which Wolter recognized and which he understood to mean that the individual “had no credit” and that

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the database had no records “matching the name to the Social Security number.”

¶ 14 Wolter further testified that he wrote an “A” at the top of the rental application, indicating he reviewed and approved Ramirez’s application to live in apartment 503. Wolter verified that Ramirez was employed as of April 5, 2004, to make sure he could pay rent. Wolter verified Ramirez’s rental payment history with his previous landlord. He crossed out Rodriguez’s name on the application because he would only approve two people to live in the unit. WRE received no complaints of more than two people residing in apartment 503. WRE ran credit checks in April 2004 to check prospective tenants’ payment histories and their creditworthiness to rent the apartment. WRE had no notice that Rodriguez lived in the apartment with Ramirez and Maldonado. No tenants registered complaints about Ramirez or Maldonado. Ramirez and Maldonado consistently paid their rent between May 1, 2004 and January 2005.

¶ 15 Leslie Sherman, WRE’s director of operations, testified regarding procedures used when a tenant notified management of an assault on the premises. If Sherman received a call regarding an assault, she would come to the property and speak to the parties involved to find out what happened. If, in fact, an assault occurred, she would contact the police. If she found a tenant had assaulted another tenant, she would move to evict the person who committed the assault. She “absolutely” expected Paqiza to follow up with her if a tenant told her she was assaulted by another tenant. Paqiza never contacted Sherman regarding a complaint that a tenant was chased by another tenant. She did not recall any tenant complaints from May 2004 to January 2005.

¶ 16 Paqiza testified that she was the building manager at Winthrop Tower and resided there for 26 years. She provided prospective tenants with rental applications and would show

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apartments to prospective tenants. Paqiza would ask to see identification documents from prospective tenants. She never found more than two adults living in a studio apartment. She does not monitor whether two or more people live in a studio apartment. She was not aware of any new security measures that WRE took between December 2004 when the janitor was killed, and the time decedent was murdered. Paqiza did not remember Ramirez. Prospective tenants filled out rental applications in front of Paqiza and then she would submit the application to the WRE main office. According to Paqiza, WRE had a policy requiring prospective tenants to be present when filling out the rental application. After Wolter approved the application, she would receive the lease. All individuals who would reside in the building were supposed to sign the lease.

¶ 17 Allison Drake testified that she lived on the sixth floor of Winthrop Tower with her mother, Barbara in 2004. Allison's brother, Mickey, lived in the same building in apartment 510. Allison would visit her brother's apartment regularly to get cigarettes from him. She stated that, approximately seven or eight months prior to decedent's murder, she was chased in the building's sixth level stairwell while smoking a cigarette there. She recognized the person chasing her "because he lived across the hall from my brother." She had seen the person before and described that "he would open his door and motion for me to come into his apartment or he would just be sitting in the doorway with beer bottles around him sometimes after my brother got off work." Before being chased, Allison recalled seeing the individual who chased her a total of five or six times. She ran away from him in the stairwell and into her mother's apartment because she felt afraid. Once she entered her mother's apartment, she quickly closed the door

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and told her mother what happened. At the time of the incident, she did not know the name of the individual who had chased her, but she knew where he lived. She identified a photograph of Ramirez as the man who chased her. Allison also testified that she had been living in Winthrop Tower for nearly 10 years at the time of decedent's murder and that she did not yell for help during the chase. She did not complain about the incident to any WRE employees or the police, even after the police charged Ramirez for the murder of decedent.

¶ 18 Plaintiff testified that she went with decedent to look at the apartments in Winthrop Tower. She and decedent first met with a female building manager. They viewed two apartments, one on the third floor and one on the tenth floor. Plaintiff and decedent chose the tenth-floor apartment because decedent previously was attacked when she resided at 1515 Halsted in Chicago. The building manager told them management performs background checks on lease applicants.

¶ 19 After plaintiff rested her case, the WRE defendants moved for a directed verdict, but the court denied the motion.

¶ 20 The WRE defendants then recalled Paqiza as their witness. She testified that she had no recollection of a conversation with Barbara Drake involving a chasing incident prior to decedent's murder.

¶ 21 Chicago police detective Anthony Villardita, who investigated decedent's murder, testified that he responded to the crime scene and examined the door to decedent's apartment from both the inside and the outside. He found no signs of forced entry into decedent's apartment and that there was no connection between the murder of the janitor and the murder of

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decedent.

¶ 22 After closing arguments and deliberations, the jury returned a verdict in favor of plaintiff and against defendants, apportioning 90% of the liability to Ramirez and 10% to the WRE defendants. The jury also unanimously responded “yes” to a special interrogatory, finding that plaintiff met her burden to prove that the WRE defendants voluntarily undertook a duty to protect decedent from the criminal acts of others. After the court excused the jury, the WRE defendants moved for judgment *n.o.v.* The record shows the following discussion on that motion:

“MR. GOKEN [counsel for the WRE defendants]: The defense would just like to move for JNOV at this time.

THE COURT: Just an oral motion?

MR. GOKEN: If your Honor would allow for us leave to brief it, we could do that.

THE COURT: Any response?

MR. DUNN [counsel for plaintiff]: This is their motion, and we would ask that you deny it, that there’s plenty of evidence in the case, Judge, to support the jury’s verdict. We would ask the Court to deny it. I’m not sure what arguments they may have or they would make.

THE COURT: I’m not quite sure I know how to handle it right now. If you’re making an oral motion, I’ll do that, or if you want to proceed otherwise, it’s up to you.

MR. GOKEN: We could make an oral motion.

THE COURT: Any arguments? Anything else you want to say?"

At that point defense counsel argued several points in favor of the motion. Following plaintiff's response and a brief reply from the WRE defendants, the circuit court denied the oral motion for judgment *n.o.v.*

¶ 23 On April 4, 2004, the WRE defendants filed a written posttrial motion for judgment *n.o.v.*, arguing no reasonable fact finder could conclude the WRE defendants undertook a duty to protect decedent from Ramirez's independent criminal acts. On April 23, 2012, the circuit court denied the written judgment *n.o.v.* motion. This timely appeal followed.

¶ 24 ANALYSIS

¶ 25 Before reaching the merits of the WRE defendants' appeal, we must address plaintiff's contention that the appeal should be dismissed, or that our review should be limited to only those arguments made in the WRE defendants' oral posttrial motion. Plaintiff argues that a party is entitled to only one posttrial motion attacking the verdict and, as a result, the second written posttrial motion was a nullity. Plaintiff contends that, even if this court does not dismiss the appeal on this basis, its review should be limited to those issues raised in the oral posttrial motion. Plaintiff claims prejudice from two posttrial motions attacking the verdict because the WRE defendants "were able to test the waters on their arguments and see which, if any, might be persuasive to the circuit court," and refine their arguments accordingly.

¶ 26 The WRE defendants respond that they properly filed a written posttrial motion for judgment *n.o.v.*, relying on *Stackhouse v. Royce Realty & Management Corp.*, 2012 IL App (2d) 110602. In addition, the WRE defendants argue plaintiff suffered no prejudice because she

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prevailed when the circuit court denied the judgment *n.o.v.* motion.

¶ 27 To resolve this issue, we look to section 2-1202(b) of the Illinois Code of Civil Procedure (Code) (735 ILCS 5/2-1202(b) (West 2010)). Section 2-1202(b) of Code provides that motions for judgment notwithstanding the verdict “must be sought in a single post-trial motion.” 735 ILCS 5/2-1202(b) (West 2010). Section 2-1202(b) also states “[t]he post-trial motion must contain the points relied upon, particularly specifying the grounds in support thereof, and must state the relief desired, as for example, the entry of a judgment, the granting of a new trial or other appropriate relief.” *Id.* Section 2-1202(c) of the Code provides that posttrial motions “must be filed within 30 days after the entry of judgment.” 735 ILCS 5/2-1202(c) (West 2010).

¶ 28 *Stackhouse* specifically found that a posttrial motion pursuant to section 2-1202 of the Code must be in writing to be effective and that an oral motion is insufficient. *Stackhouse*, 2012 IL App (2d) 110602, ¶ 15. In *Stackhouse*, after the jury returned its verdict, the defendants orally moved for judgment *n.o.v.* The circuit court denied the motion. Thereafter, the defendants filed a timely posttrial motion, which the court also denied. The defendants filed a notice of appeal within 30 days of the court’s denial of their written motion. The plaintiff contended that the defendants’ oral request constituted their posttrial motion pursuant to section 2-1202 such that the defendants’ notice of appeal was untimely, rendering the reviewing court without jurisdiction. The *Stackhouse* court found the plaintiff’s argument lacked merit. *Id.* ¶ 16. Because the defendants filed a notice of appeal within 30 days of the circuit court’s decision to deny the written posttrial motion, the reviewing court found it had jurisdiction to consider the defendants’ appeal. *Id.*

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¶ 29 Unlike the defendants in *Stackhouse*, the WRE defendants filed their notice of appeal within 30 days of their oral posttrial motion *and* their written posttrial motion. Accordingly, there is no viable jurisdictional question before us. That being said, the question remains whether section 2-1202(b) of the Code, which expressly provides a judgment *n.o.v.* motion “must be sought in a single post-trial motion,” mandates that a posttrial motion be in writing to be effective. 735 ILCS 5/2-1202(b) (West 2010).

¶ 30 We conclude the language in section 2-1202(b) is determinative. If a party seeking posttrial relief files a written motion within the 30-day period following judgment, only the written posttrial motion controls. The clear and unambiguous language of section 2-1202(b) provides that the posttrial motion “must contain the points relied upon, particularly specifying the grounds in support thereof, and must state the relief desired,” which contemplates that the posttrial motion be in writing to be effective. 735 ILCS 5/2-1202(b) (West 2010).

¶ 31 In this case, the WRE defendants orally moved for judgment *n.o.v.* following the jury verdict. This court previously has held, regarding an earlier version of the same statute, “While it is true that the statute does not specifically provide that the post-trial motion must be in writing, we are of the opinion that the act contemplates that the post-trial motion should be in writing, because the act provides that the motion must be filed and that it must contain the points relied upon and particularly specify the grounds in support thereof.” *McKinney v. Cratty*, 18 Ill. App. 2d 561, 563 (1958) (discussing the then-applicable statute (Ill. Rev. Stat. 1957, ch. 110, ¶ 68.1), which also specified that a motion for judgment *n.o.v.* “must be sought in a single post trial motion”); see also *Neiman v. City of Chicago*, 37 Ill. App. 2d 309, 325 (1962) (“Under the

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present [Civil Practice] Act, there can be no such thing as an oral post-trial motion.”). As the written posttrial motion was filed within 30 days of the March 27, 2012 judgment, we conclude the WRE defendants’ written posttrial motion was both timely and effective for purposes of preserving the issues raised in the motion for appeal. 735 ILCS 5/2-1202(b) (West 2010); *Stackhouse*, 2012 IL App (2d) 110602, ¶ 16.

¶ 32 That brings us to the merits of the appeal. The WRE defendants argue that they should have been granted a judgment *n.o.v.* because they owed no duty to plaintiff’s decedent to protect her from the independent criminal acts of a third party. The WRE defendants assert no special relationship existed between them and decedent such that the law imposed a duty of care to protect against Ramirez’s criminal attack. The WRE defendants also contend their policies and procedures did not constitute a voluntary undertaking to protect decedent from third-party criminal acts. Finally, the WRE defendants argue that plaintiff did not establish proximate cause.

¶ 33 Plaintiff argues that our supreme court recognized in *Iseberg v. Gross*, 227 Ill. 2d 78, 88 n.4 (2007), that a landlord-tenant relationship qualifies as a “special relationship,” as provided in the Restatement (Third) of Torts. *Id.* (citing Restatement (Third) of Torts, Proposed Final Draft No. 1 (Apr. 6, 2005)). Plaintiff contends that, even if our supreme court has yet to find the landlord-tenant relationship is a “special relationship” giving rise to a duty to protect tenants from third-party criminal acts, other jurisdictions have recognized this duty and, therefore, we should do so as well. Plaintiff asserts she presented overwhelming evidence that the WRE defendants undertook a duty, breached that duty, and that these breaches were a proximate cause of decedent’s death.

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¶ 34 A judgment *n.o.v.* “is properly granted only where all of the evidence, when viewed in its aspect most favorable to the opponent, so overwhelmingly favors the movant that no contrary verdict based on that evidence could ever stand.” *Choate v. Indiana Harbor Belt R.R. Co.*, 2012 IL 112948, ¶ 21. Denial of a motion for judgment *n.o.v.* presents an issue of law which we review *de novo*. *Evans v. Shannon*, 201 Ill. 2d 424, 427 (2002). We examine whether “when all of the evidence is considered, together with all reasonable inferences from it in its aspect most favorable to the plaintiffs, there is a total failure or lack of evidence to prove any necessary element of the [plaintiff’s] case.’ ” *York v. Rush-Presbyterian-St. Luke’s Medical Center*, 222 Ill. 2d 147, 178 (2006) (quoting *Merlo v. Public Service Co. of Northern Illinois*, 381 Ill. 300, 311 (1942)).

¶ 35 The central question posed here is whether the WRE defendants owed any duty to protect the decedent against the criminal acts of third parties under these facts. To succeed in an action for negligence, the plaintiff must establish that the defendant owed a duty to the plaintiff, that the defendant breached that duty, and that the breach proximately caused injury to the plaintiff. *Rhodes v. Illinois Central Gulf R.R.*, 172 Ill. 2d 213, 227 (1996). “The existence of a duty under a particular set of circumstances is a question of law for the court to decide.” *Id.* (citing *Buchelares v. Chicago Park District*, 171 Ill. 2d 435, 445 (1996)). “Where a plaintiff has obtained recovery against a defendant based on negligence, and if the defendant did not owe the plaintiff a duty, then a judgment *n.o.v.* in favor of the defendant is required.” *Id.* (citing *Washington v. City of Chicago*, 188 Ill. 2d 235, 238-39 (1999)). When the circuit court has erroneously denied a motion for judgment *n.o.v.*, we reverse the verdict without a remand.

Lawlor v. North American Corp. of Illinois, 2012 IL 112530, ¶ 37.

¶ 36 “Generally, a landowner has no duty to protect others from criminal activities by third persons.” *Sanchez v. Wilmette Real Estate and Management Co.*, 404 Ill. App. 3d 54, 59 (2010) (citing *Rowe v. State Bank of Lombard*, 125 Ill. 2d 203, 215-16 (1988)). “However, a duty to protect others from criminal activities by third persons does exist where there is a special relationship between the parties.” *Id.* See also *Iseberg*, 227 Ill. 2d at 87. Plaintiff claims a special relationship existed between the WRE defendants and plaintiff’s decedent, arguing that our supreme court in *Iseberg* recognized that the landlord-tenant relationship qualifies as a “special relationship.” We disagree with that interpretation of *Iseberg*. The *Iseberg* court merely noted in passing that “the Restatement (Third) of Torts: Liability for Physical Harm § 40, Proposed Final Draft No. 1 (April 6, 2005), has added employer-employee, school-student, and landlord-tenant as additional ‘special relationships.’ ” *Iseberg*, 227 Ill. 2d at 88 n.4. The *Iseberg* court did not adopt that provision of the Restatement, nor made any finding whatsoever that landlords have a special duty to protect tenants from criminal acts of a third-parties.

¶ 37 Indeed, Illinois courts have “repeatedly held that the simple relationship between a landlord and a tenant *** is not a ‘special’ one imposing a duty to protect against the criminal acts of others.” *Rowe*, 125 Ill. 2d at 216; see also *Pippin v. Chicago Housing Authority*, 78 Ill. 2d 204, 208 (1979) (landlord owes no general duty to protect tenants from foreseeable criminal activity); *Phillips v. Chicago Housing Authority*, 89 Ill. 2d 122, 126 (1982) (same). In Illinois, a landlord “is not an insurer and cannot be held liable to the tenant for harm done by every criminal intruder.” *Morgan v. 253 East Delaware Condominium Ass’n*, 231 Ill. App. 3d 208, 211 (1992);

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see also *Bourgonje v. Machev*, 362 Ill. App. 3d 984, 995 (2005). Applying these precedents to the facts, we find that no special relationship imposing a duty to protect arose between the WRE defendants and decedent.

¶ 38 Plaintiff suggests if apartment buildings were considered “hotels,” the landlord-tenant relationship would be the equivalent of innkeeper-guest and thus fall within the ambit of the Illinois Innkeeper Protection Act (740 ILCS 90/0.01 *et seq.* (West 2004)). Along that line, plaintiff relies strongly on *Cottmire v. 181 East Lake Shore Drive Hotel Corp.*, 330 Ill. App. 549, 554-55 (1947). In *Cottmire*, the plaintiff filed an action to recover damages for personal injuries she sustained from the breaking of a porcelain handle attached to the bathtub water faucet in the bathroom of the apartment occupied by her in the hotel operated by the defendant. The plaintiff had no written lease for her unit. The court considered whether the relationship of the parties was that of landlord-tenant or innkeeper-guest, and concluded the parties had an innkeeper-guest relationship. *Cottmire*, 330 Ill. App. at 555. The court noted that the plaintiff was a permanent resident, but the services provided to her were the same as the services for transient guests. Therefore, “[t]he defendant was under a duty to provide reasonably safe premises and appliances.” *Id.* Here, in contrast, the decedent did sign a written lease for a specific term, and the WRE defendants did not hold themselves out to the public as a “hotel.” *Cottmire* is thus distinguishable on its facts and is inapplicable here.

¶ 39 The plaintiff next contends that WRE’s policies and procedures constituted a “voluntary undertaking” to protect decedent from third-party criminal acts. Plaintiff alleged that the WRE defendants negligently performed their rental application procedures, negligently enforced their

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occupancy rules, and negligently responded to a tenant complaint that should have put the WRE defendants on notice of Ramirez's criminal behavior. Plaintiff argues decedent was murdered as a result of the alleged negligence. Plaintiff essentially argues that by implementing what appear to be fairly standard policies and procedures related to rental applications, occupancy limits, and tenant complaints, the WRE defendants voluntarily assumed a duty to protect decedent from Ramirez's murderous attack.

¶ 40 Our supreme court has found a "landlord may be held liable for the criminal acts of third parties when it 'voluntarily undertakes to provide security measures, but performs the undertaking negligently, if the negligence is the proximate cause of injury to the plaintiff.' [Citations.]" *Rowe*, 125 Ill. 2d at 217. The exception may apply whether there is the failure by omission to perform the voluntary undertaking (nonfeasance), or the negligent performance of the undertaking (misfeasance). *Bourgonje*, 362 Ill. App. 3d at 996.

¶ 41 To establish liability for nonfeasance, or the failure to perform, "a plaintiff must show: (1) a promise by the defendant to do an act or to render a service; (2) reliance upon the defendant's promise; and (3) injury which was a proximate result of the defendant's omission to perform the voluntary undertaking." *N.W. v. Amalgamated Trust & Savings Bank*, 196 Ill. App. 3d 1066, 1073 (1990). To establish liability for misfeasance, a plaintiff must show he or she: (1) suffered physical harm and (2) that the harm is the result of the defendant's failure to exercise reasonable care where (a) his failure to exercise reasonable care increases the plaintiff's risk of harm, or (b) the plaintiff suffered the harm due to his or her reliance on the defendant's undertaking. Restatement (Second) of Torts § 323 (1965); see also *Frye v. Medicare-Glaser*

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Corp., 153 Ill. 2d 26, 32 (1992). The existence and extent of voluntary undertakings are to be analyzed on a case-by-case basis. *Bourgonje*, 362 Ill. App. 3d at 1004; see also *Shea v. Preservation Chicago, Inc.*, 206 Ill. App. 3d 657, 663 (1990) (“The proper inquiry is to determine whether, on a case-by-case basis, *** the circumstances demonstrate that the landlord, by retaining access to or control over the premises, assumed a duty to protect tenants against reasonably foreseeable third-party criminal attacks.”). “Under a voluntary undertaking theory of liability, the duty of care to be imposed upon a defendant is limited to the extent of the undertaking.” *Bell v. Hutsell*, 2011 IL 110724, ¶ 12.

¶ 42 At trial, the jury heard evidence of various policies and procedures that the WRE defendants had implemented for the building, including its prospective tenant screening procedures. According to plaintiff, the WRE defendants sought only “good,” “non-destructive” tenants in the building and “had prospective tenant screening procedures in place to weed out bad applicants.” Plaintiff gives much credence to the section of the rental application that provided information regarding whether the applicant had any prior criminal convictions, arguing that the WRE defendants’ rental application process could reasonably be construed as a security measure intended to reduce the risk of criminal attack within the building.

¶ 43 The evidence does not, however, support this argument. Even viewed in the light most favorable to the plaintiff, the evidence shows that the WRE defendants only implemented their rental application policies to screen potential tenants for creditworthiness. Accordingly, the evidence did not establish the WRE defendants voluntarily undertook to provide security measures for tenants against the criminal acts of third persons. *Rowe*, 125 Ill. 2d at 216.

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¶ 44 Plaintiff also alleges the WRE defendants failed to follow tenant screening procedures for Ramirez’s application and, had they followed those procedures, they would have found the Social Security number for Ramirez on the application was false and he would have been rejected as a prospective tenant. However, there was no evidence of any causal connection between the submission of an alleged false Social Security number and decedent’s subsequent murder. In sum, we conclude that any assumed duty regarding the rental application process was limited to the exercise of reasonable care to ensure that a rental applicant could pay the rent. Plaintiff presented no evidence at trial suggesting otherwise.

¶ 45 Similarly, we must reject the plaintiff’s contention that WRE’s knowledge that a tenant had allegedly been chased by someone in the building created some assumed duty to protect decedent from a third-party criminal attack. Plaintiff’s argument is problematic because the record does not demonstrate that the WRE defendants’ procedures for responding to tenant complaints of alleged criminal activity were designed as a security measure for the protection of tenants as opposed to procedures designed for responding, after the fact, to tenant complaints related to crime in the building, a key distinction. Plaintiff presented no evidence that an employee of the WRE defendants made any promise to plaintiff or decedent to follow up tenant complaints of alleged criminal activity in the building. There is also no evidence that plaintiff or decedent relied on these alleged preventative security measures. Without establishing these elements for alleged nonfeasance, plaintiff cannot claim the WRE defendants voluntarily undertook a duty to provide the preventative security measures she alleges. See *Bourgonje*, 362 Ill. App. 3d at 997 (“a plaintiff’s reliance on the defendant’s promise is an independent, essential

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element in cases of nonfeasance”); *Amalgamated Trust*, 196 Ill. App. 3d at 1073 (“such reliance is required when a plaintiff wants to hold a defendant liable for an omission to perform an undertaking”); compare *Amalgamated Trust*, 196 Ill. App. 3d at 1073 (“The plaintiff has made a sufficient showing of reliance. There was a promise by the landlord to maintain the locks in proper working condition at all times to prevent entry by unauthorized persons.”). Accordingly, we find the alleged nonfeasance of the WRE defendants to execute their policy of following up after the Allison Drake incident did not violate some voluntary duty it had to provide security measures for tenants to protect them from third-party criminal attacks.

¶ 46 We find similarly as to the alleged misfeasance of the WRE defendants. Plaintiff presented no evidence to show that the WRE defendants’ failure to follow up on Drake’s complaint was a failure to exercise reasonable care and increased decedent’s risk of harm, because the evidence clearly showed Allison did not identify Ramirez as the person who chased her until after decedent’s murder.

¶ 47 Plaintiff likewise failed to adduce evidence at trial that the WRE defendants’ policy regarding occupancy limits was designed as a security measure for the protection of tenants, that the WRE defendants promised plaintiff or decedent that the occupancy limits were intended as a building security measure, or that anyone relied on the occupancy policy as a security measure. Therefore, we find the WRE defendants’ alleged failure to follow their policy regarding occupancy limits was not a voluntary undertaking to provide security measures for tenants to protect them from third-party criminal attacks.

¶ 48 In sum, we find that WRE had no duty to protect its tenants from third-party criminal

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acts. The evidence that WRE's actions somehow constituted a proximate cause of decedent's murder was merely speculative and insufficient to sustain the jury's verdict. *Amalgamated Trust*, 196 Ill. App. 3d at 1077.

¶ 49

CONCLUSION

¶ 50 For these reasons, we reverse both the order of the circuit court denying the WRE defendants' motion for judgment *n.o.v.*, and the jury verdict entered against the WRE defendants, without remand.

¶ 51 Reversed.